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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1997

UNUM LIFE INSURANCE COMPANY OF AMERICA,
Petitioner,

v.

JOHN E. WARD,
Respondent.

On Writ of Certiorari To The United States Court of Appeals For the Ninth Circuit

BRIEF *AMICUS CURIAE* OF THE AMERICAN ASSOCIATION OF RETIRED PERSONS IN SUPPORT OF RESPONDENT

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BRIEF *AMICUS CURIAE* OF THE AMERICAN ASSOCIATION OF RETIRED PERSONS IN SUPPORT OF RESPONDENT

INTEREST OF *AMICUS CURIAE*

The American Association of Retired Persons (AARP) is a nonprofit membership organization of more than 30 million persons, age 50 or older, working or retired, that is dedicated to addressing the needs and interests of older Americans.[1/] AARP seeks through education, advocacy and service to enhance the quality of life for all by promoting independence, dignity and purpose. As a method of promoting

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[1/] No counsel for any party authored any portion of this brief. No persons other than AARP, its members, or its counsel have made a monetary contribution to the preparation and submission of this brief.

independence, AARP attempts to foster the economic security of individuals as they age by seeking to increase the availability, security, equity, and adequacy of public and private pension, health, disability, and other employee benefits.

AARP's members and other participants and beneficiaries in private, employer-sponsored employee benefit plans rely on the Employee Retirement Income Security Act (ERISA) to protect their rights under those plans. 29 U.S.C. § 1001 *et seq*. Contrary to its purpose, a statute that was designed to safeguard employee benefits has, all too frequently, been used to deprive employees of rights and protections they previously enjoyed under state law. Even after the Court's recent preemption trilogy,[2/] the lower courts still are struggling with the breadth of ERISA's preemption clause.[3/] These lower court decisions bear directly on the ability of participants and beneficiaries to bring their claims for benefits[4/] as well as

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[2/] *Boggs v. Boggs*, 117 S. Ct. 1754 (1997); *DeBuono v. NYSA-ILA Medical & Clinical Servs. Fund*, 520 U.S. 806 (1997); *California Division of Labor Standards Enforcement v. Dillingham Construction, N.A., Inc.*, 519 U.S. 316 (1997).

[3/] *Compare, e.g., Washington Physicians Service Ass'n v. Gregoire*, 147 F.3d 1039 (9th Cir. 1998), *petition for cert. filed*, 67 U.S.L.W. 3376 (U.S. Nov. 23, 1998) (No. 98-889) *with Prudential Ins. Co. v. National Park Medical Center, Inc.*, 154 F.3d 812 (8th Cir. 1998). *See generally* Karen A. Jordan, *The Shifting Preemption Paradigm: Conceptual and Interpretive Issues*, 51 VAND. L. REV. 1149 (1998).

[4/] Approximately 61% of employed Americans are eligible for health benefits through employment-based health plans. *See* Sarah Snider & Paul Fronstin, Employee Benefit Research Inst., *Sources of Health Insurance and Characteristics of the Uninsured: Analysis of the March 1994 Current Population Survey*, EBRI ISSUE BRIEF NO. 158/SPECIAL REPORT SR-281, at 4 (Feb. 1995). In 1994, almost one-third of retirees (continued...)

states' attempt to provide better consumer protections for their citizens.

Given the reliance of petitioner UNUM Life Insurance Company of America and its *amici* on this Court's decision in *Pilot Life Insurance Co. v. Dedeaux*, 481 U.S. 41 (1987), this case presents the Court with the opportunity to review its holding in *Pilot Life* in light of its recent preemption decisions.[5/] The decision in this case will have a direct and vital bearing on the economic security of AARP's members and other older Americans.[6/] In light of the significance of

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[4/](...continued)
reported current coverage under the health plan of their former employer. Pension and Welfare Benefits Admin., U.S. Dep't of Labor, *Retirement Benefits of American Workers: New Findings from the September 1994 Current Population Survey* 3 (Sept. 1995). Approximately 47% of Americans are covered by a pension plan or have prior plan vested benefits. *Id.* at 55, tbl. B7. Among private sector retirees aged fifty-five and older, 43% are receiving, have received, or expect to receive pension benefits from former employment. *Id.* at 47, tbl. B2.

[5/] AARP's brief assumes that the Court will find that California's notice-prejudice rule "relates to" an employee benefit plan, ERISA § 514(a), 29 U.S.C. § 1144(a), and that it is exempt from preemption under the saving clause. ERISA § 514(b)(2)(A), 29 U.S.C. § 1144(b)(2)(A). AARP's brief does not address the rule of law developed in *Elfstrom v. New York Life Ins. Co.*, 432 P.2d 731 (1967).

[6/] As part of its advocacy efforts to ensure, to the greatest extent possible, that participants and beneficiaries receive the benefit of ERISA's protections, AARP has participated as *amicus curiae* in numerous cases involving ERISA, including *Boggs v. Boggs*, 117 S. Ct. 1754 (1997); *California Division of Labor Standards Enforcement v. Dillingham Construction*, 519 U.S. 316 (1997); and *John Hancock Mutual Life Ins. Co. v. Harris Trust & Savings Bank*, 510 U.S. 86 (1993).

the issues presented by this case, AARP respectfully submits this brief *amicus curiae*.[2]

SUMMARY OF ARGUMENT

In *Pilot Life Insurance Co. v. Dedeaux*, 481 U.S. 41 (1987), this Court held that the civil enforcement provisions under ERISA § 502(a), 29 U.S.C. § 1132(a), were to be the exclusive vehicle for actions by ERISA plan participants and beneficiaries asserting improper processing of a claim for benefits. The Court's analysis did not discuss traditional Supremacy Clause principles although this was the implicit basis for its holding.

In passing ERISA's preemption clause, Congress reserved power to legislate over the field of employee benefits, ERISA § 514(a), 29 U.S.C. § 1144(a), and then expressly restored power to the states to regulate insurance as applied to employee benefit plans. ERISA § 514(b)(2)(A), 29 U.S.C. § 1144(b)(2)(A). This express restoration of state power requires critical analysis and unmistakable Congressional intent before it can be found that a state insurance law is preempted by ERISA under the Supremacy Clause. U.S. Const. art. VI, cl. 2; *Pacific Gas & Elec. Co. v. State Energy Resources Conservation & Dev. Comm'n*, 461 U.S. 190, 206 (1983).

This Court recognized the balance between state insurance laws and ERISA when it found that "ERISA leaves room for complementary or dual federal and state regulation" and state law would only be superseded when the "dual regimes [could] not be harmonized or accommodated." *John Hancock Mutual Life Ins. Co. v. Harris Trust & Sav. Bank*, 510 U.S. 86, 98 (1993). In order to determine whether a state regulation is

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[2] The written consents of the parties have been filed with the Clerk of the Court pursuant to Supreme Court Rule 37.3.

complementary or can be harmonized, it is necessary to determine whether "'compliance with both federal and state regulations is a physical impossibility,'" or whether that "law 'stands as an obstacle to the accomplishment of the full purposes and objectives of Congress[.]'" *Gade v. National Solid Wastes Management Ass'n*, 505 U.S. 88, 98 (1992) (citations omitted).

California's notice-prejudice rule provides that an insurer may not deny a claim as untimely unless the insurer can show actual prejudice (other than payment of the claim itself or general untimeliness) resulting from the delay. This rule neither implicates nor impinges upon ERISA's enforcement scheme because it provides no additional remedies or an alternative enforcement mechanism. This rule also does not implicate ERISA's claims procedure because the notice-prejudice rule is a complementary interpretive rule which deems a claim to be timely filed. Thus, compliance with both state and federal laws is not a physical impossibility.

Moreover, the fact that federal and state laws are different does not mean that there is an impermissible conflict. ERISA is not absolute, but explicitly recognizes a role for state insurance regulation, thus permitting state insurance laws to supplement or complement ERISA's standards. *John Hancock*, 510 U.S. at 98. California's notice-prejudice rule provides additional time for a participant to have his or her claim deemed timely filed, thus protecting their rights, while still safeguarding the insurer from stale claims. There is no conflict or inconsistency with ERISA. Thus, California's notice-prejudice rule cannot be found to stand as an obstacle to the accomplishment and execution of Congressional purposes and objectives. *See id.* at 99.

ARGUMENT

I. RECENT PREEMPTION DECISIONS AND TRADITIONAL SUPREMACY CLAUSE ANALYSIS URGE A REEXAMINATION OF *PILOT LIFE*.

A. The Impact of *Pilot Life*'s Holding Cannot Be Underestimated.

In *Pilot Life Insurance Co. v. Dedeaux*, 481 U.S. 41, 43 (1987), this Court stated that the issue before it was whether ERISA "pre-empts state common law tort and contract actions asserting improper processing of a claim for benefits under an insured employee benefit plan." Mr. Dedeaux brought claims for tortious breach of contract, fraud in the inducement and breach of fiduciary duties against Pilot Life because it had reinstated and terminated his disability benefits several times during a three year period. Not only did he seek the benefits to which he was entitled, but he also sought damages for mental and emotional distress and punitive damages. *Id.* at 43-44.

After describing ERISA's statutory framework including ERISA's purpose of protecting participants and beneficiaries, the Court set forth the mechanics to analyze ERISA's preemption provisions. *Id.* at 45. First, it must be determined whether a state law relates to an employee benefit plan. ERISA § 514(a), 29 U.S.C. § 1144(a). Second, if the state law relates to a plan, it must be determined whether the state law is saved from preemption because it is a law that regulates insurance. ERISA § 514(b)(2)(A), 29 U.S.C. § 1144(b)(2)(A). Third, if the first two determinations are answered in the affirmative, then it must be determined whether a state law that "purport[s] to regulate insurance" deems an employee benefit plan to be an insurance company. ERISA § 514(b)(2)(B), 29 U.S.C. § 1144(b)(2)(B). Although it was unnecessary to the holding of *Pilot Life* in that the Court had found that the state law at issue was not saved as a

law regulating insurance, the Court added a fourth component to its preemption analysis -- even if the state law is saved because it is a law that regulates insurance, it will still be preempted if it directly conflicts with a provision of ERISA. 481 U.S. at 51-53.

The Court found that the civil enforcement provisions under ERISA § 502(a), 29 U.S.C. § 1132(a), were to be the exclusive vehicle for actions by ERISA plan participants and beneficiaries asserting improper processing of a claim for benefits. *Id.* at 52.[8] Any and all other state causes of actions for claims which fall within the scope of § 502(a) would pose an obstacle to the purposes and objectives of Congress. The Court relied upon the language and structure of the civil enforcement provisions and the legislative history. The Court characterized the civil enforcement scheme of § 502(a) as "one of the essential tools for accomplishing the stated purposes of ERISA." *Pilot Life*, 481 U.S. at 52. The Court stated that the civil enforcement scheme represented a balance between the need for prompt resolution of benefit claims against the encouragement of the formation of employee benefit plans. *Id.* at 54. The Court further explained that the legislative history showed Congress' expectation that a body of federal common law would develop. The Court opined that this expectation would be undermined if remedies available under ERISA could be supplemented or supplanted by state laws. *Id.* at 56. Thus, *Pilot Life* implicitly held, without significant analysis concerning the conflict resulting from concurrent state and federal powers, that a state law that is exempted from preemption under ERISA's saving clause

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[8] At least one commentator has suggested that this holding was not compelled by ERISA's language or its legislative history. Catherine L. Fisk, *The Last Article about the Language of ERISA Preemption? A Case Study of the Failure of Textualism*, 33 HARV. J. ON LEGIS. 35, 51-52 (1996).

could still be preempted under the Supremacy Clause because it conflicts with a substantive provision of ERISA.

The significance of *Pilot Life*'s holding cannot be underestimated. Not only have participants been unable to bring claims for intentional infliction of emotional distress, bad faith dealings, and other torts and to collect punitive and other extra contractual damages, but many participants have been left with no remedy at all. *E.g.*, *Degan v. Ford Motor Co.*, 869 F.2d 889, 895 (5th Cir. 1989) (characterization of this situation as "[b]etrayal [w]ithout [a] [r]emedy"). There has been more than one case where a plan has refused to provide a health benefit which is due and owing under the plan, until it is too late and the participant dies, leaving the participant's estate with no remedy. *E.g.*, *Andrews-Clarke v. Travelers Ins. Co.*, 984 F. Supp. 49 (D. Mass. 1997) (insurance company refused to authorize alcohol detoxification for more than 5 days in a row although policy permitted 30 days; participant committed suicide, and estate had no remedy).

Moreover, recent cases dealing with managed care issues such as utilization review have required federal courts to enter the traditional state area of medical malpractice. These cases have revolved around the characterization of the breach to decide whether a state law claim may proceed. If the breach is characterized as improper processing of benefits, the state claim is preempted under *Pilot Life*. *E.g.*, *Corcoran v. United Healthcare, Inc.*, 965 F.2d 1321 (5th Cir. 1992) (suit for wrongful death of fetus and malpractice against utilization review company's refusal to authorize hospitalization to monitor pregnancy was preempted because its decisions were benefit determinations). If it is characterized as negligent provision of medical care or a quality of care claim, then the claim is not preempted. *E.g.*, *Dukes v. U.S. Healthcare, Inc.*, 57 F.3d 350 (3d Cir. 1995) (suit for refusal to perform blood tests and malpractice for allowing patient's condition to deteriorate resulting in stillbirth was not preempted since

quality of care is an area of traditional state regulation and ERISA is silent).

The significant changes in the health care industry since ERISA's passage has led to increased state legislative activity to attempt to provide increased consumer protections. *See, e.g.*, *Washington Physicians Service Ass'n v. Gregoire*, 147 F.3d 1039 (9th Cir. 1998), *petition for cert. filed*, 67 U.S.L.W. 3376 (U.S. Nov. 23, 1998) (No. 98-889) (State of Washington's alternative provider statute not preempted in its application to HMOs which sell insurance); *Prudential Ins. Co. v. National Park Medical Center, Inc.*, 154 F.3d 812 (8th Cir. 1998) (Arkansas statute ensuring that participants may see the physician of their choice specifically excludes ERISA plans and therefore is preempted); *Stuart Circle Hosp. Corp. v. Aetna Health Management*, 995 F.2d 500 (4th Cir. 1993) (Virginia any willing provider statute is saved from preemption because it "regulates the business of insurance"); *Corporate Health Ins., Inc. v. Texas Dep't of Ins.*, 12 F. Supp.2d 597 (S.D. Tex. 1998) (independent review provision mandates the administration of employee benefits and therefore relates to an ERISA plan; statute is not saved because it is not limited to the insurance industry); *American Drug Stores, Inc. v. Harvard Pilgrim Health Care, Inc.*, 973 F. Supp. 60 (D. Mass. 1997) (Massachusetts any willing provider statute was not preempted by ERISA); *Community Health Partners, Inc. v. Commonwealth*, 14 F. Supp.2d 991 (W.D. Ky. 1998) (Kentucky any willing provider statute specifically references ERISA plans but is not preempted because all plans are affected and statute is no different than mandated benefit statute). *Pilot Life* has acted as a significant barrier to these attempts and has resulted in creative judicial decisions to deal with its effects. *See generally* Nicole Weisenborn, *ERISA Preemption and Its Effect on State Health Reform*, 5-FALL KAN. J.L. & PUB. POL'Y 147 (1995); Wendy E. Parmet, *Regulation and Federalism: Legal Impediments to State Health Care Reform*, 19 AM. J.L. & MED. 121 (1993).

B. Under ERISA, State Laws Regulating the Business of Insurance Are Unique and Require a More Critical Analysis than Other Types of State Laws.

When enacting ERISA's preemption section, Congress expressly provided that ERISA preempts state laws relating to employee benefit plans. ERISA § 514(a), 29 U.S.C. § 1144(a). But Congress did something more; it created an exception explicitly ceding back power to the states to enact legislation concerning employee benefit plans if the legislation regulated the business of insurance. ERISA § 514(b)(2)(A), 29 U.S.C. § 1144(b)(2)(A). AARP contends that such express restoration of state power requires a more critical analysis and irrefutable Congressional intent before it can be found that a state insurance law is preempted by ERISA under the Supremacy Clause.[2/] U.S. Const. art. VI, cl. 2; *Pacific Gas & Elec. Co. v. State Energy Resources Conservation & Dev. Comm'n*, 461 U.S. 190, 206 (1983).

Indeed, this Court has recognized this critical analysis. In its most recent case dealing with ERISA preemption and the insurance industry, this Court recognized that "ERISA leaves room for complementary or dual federal and state regulation[.]" *John Hancock*, 510 U.S. at 98. Significantly, this Court held that generally state law governing insurance is not displaced. Federal preemption would only occur "'where compliance with both federal and state regulations is a physical impossibility,'" *Boggs v. Boggs*, 117 S. Ct. 1754, 1762 (1997) (quoting *Gade v. National Solid Wastes*

[2/] See Stephen A. Gardbaum, *The Nature of Preemption*, 79 CORNELL L. REV. 767 (1994), arguing that there should be no preemption doctrine and providing an in-depth historical review of preemption cases. See generally Kenneth Starr, et al., American Bar Ass'n, *The Law of Preemption: A Report of the Appellate Judges Conference* (1991) for issues surrounding preemption.

Management Ass'n, 505 U.S. 88, 98 (1992)), or "'where [that] law stands as an obstacle to the accomplishment of the full purposes and objectives of Congress[.]'" *John Hancock*, 510 U.S. at 99 (first alteration in original) (quoting *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 248 (1984)). In *Hancock*, the Court "call[ed] for federal supremacy [only] when the two regimes cannot be harmonized or accommodated." *Id.* at 98. In essence, the Court construed ERISA to set minimum standards which insurance laws can complement or supplement.

And so, the issue in this case is whether compliance with California's notice-prejudice rule and ERISA can be harmonized or accommodated. AARP submits that these state and federal laws can be harmonized. In this endeavor, we must determine whether compliance with both laws is a physical impossibility and whether the notice-prejudice rule stands as an obstacle to the accomplishment of the full purposes and objectives of Congress. We address each of these in turn.

1. Compliance with both California's notice-prejudice rule and ERISA is not a physical impossibility.

California's notice-prejudice rule provides that an insurer may not deny a claim as untimely unless it can show actual prejudice (other than payment of the claim itself or general untimeliness) resulting from the delay. This rule neither implicates nor impinges upon ERISA's enforcement scheme. It does not provide any additional remedies beyond those which ERISA provides. All this rule does is to deem a claim timely filed so that participants may receive benefits under the plan. Moreover, if their claim is denied, participants must still file suit under ERISA § 502(a), 29 U.S.C. § 1132(a), in order to receive their benefit. The notice-prejudice rule is not an alternative enforcement mechanism. Finally, although fiduciaries may be obligated to administer their plans in

accordance with their written terms, *see* ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D), the plans must be administered in accordance with other ERISA provisions and other federal and state laws. *Cf. Arizona Governing Comm. for Tax Deferred Annuity and Deferred Compensation Plans v. Norris*, 463 U.S. 1073 (1983) (paying women less pension benefit than men under state plan administered by companies using only sex-based mortality tables which accounted for greater life expectancy violated Title VII); *Los Angeles Dep't of Water & Power v. Manhart*, 435 U.S. 702 (1978) (holding that an employer had violated Title VII by requiring its female employees to make larger contributions to a pension fund than male employees in order to obtain the same monthly benefits upon retirement). Consequently, the only provision of ERISA which California's notice-prejudice rule potentially implicates is ERISA's claims procedure. ERISA § 503, 29 U.S.C. § 1133; 29 C.F.R. § 2560.503-1.

AARP submits that there is no direct conflict between California's notice-prejudice rule and ERISA's claims procedure. Compliance with both is not a physical impossibility. *Compare McCarty v. McCarty*, 453 U.S. 210 (1981) (federal law prohibiting attachment of military retirement pay preempted state community property laws permitting such attachment); *Hisquierdo v. Hisquierdo*, 439 U.S. 572 (1979) (federal law prohibiting attachment of railroad retirement income preempted state community property laws expressly permitting division of same). Indeed, an insurer and/or plan may comply both with this rule and with ERISA's claim procedure.

Recent cases illustrate the high burden which must be met in order for the Court to find that compliance with both federal and state laws is a physical impossibility. In *John Hancock*, this Court rejected the argument that ERISA and state insurance laws were at odds and "would pose irreconcilable conflicts between state and federal regulatory schemes" concerning the regulation of insurance general

account contracts. 510 U.S. at 97. The Court did not believe that ERISA's fiduciary requirement to act solely in the interest of participants and state insurance requirements to consider the interests of all its contract holders, creditors and shareholders were in conflict, but rather these requirements could exist as dual federal and state regulation. *Id.* at 97-98.

In contrast is *Boggs v. Boggs*, 117 S. Ct. 1754 (1997), in which this Court found that there was a direct clash between a state law permitting testamentary transfer by a predeceased nonparticipant spouse and ERISA's requirement of a survivor's annuity. The Court held that it would undermine ERISA's mandated survivor annuity to allow a predeceased nonparticipant spouse to defeat by testamentary transfer the surviving spouse's entitlement to the annuity ERISA guaranteed her. *Id.* at 1761.

In this case, it is clear that an insurer may comply with both California's notice-prejudice rule and ERISA's claims procedure. First, ERISA requires that an employee benefit plan provide a claims procedure which a participant may use to appeal the denial of a claim for benefits. The claims procedure must provide full and fair review of the appeal. ERISA § 503, 29 U.S.C. § 1133. Second, the Secretary of Labor proscribed regulations interpreting ERISA's claim procedure under Section 503. These claims procedures provide the minimum standards under which an employee benefit plan must process claims. 29 C.F.R. § 2560.503-1 (regulation sets forth minimum requirements which the benefit claims procedures of ERISA plans must meet to be deemed reasonable); Claims Procedure for Employee Benefit Plans, 42 Fed. Reg. 27,426 (1977) (preamble explaining operation and purpose of regulation). However, the statute and claims procedure regulations are silent on the time by which participants must file their claim. The only requirement is that the amount of time be reasonable. Consequently, in this case, the claims procedure in UNUM's disability policy provided a time frame in which to file his claim. All

California's notice-prejudice rule does is to permit a claim to be deemed timely filed unless the insurer can show it was actually prejudiced. California's notice-prejudice rule acts as an interpretive or "deeming" rule in determining whether an insurance claim has been timely filed.

Because an insurer can physically comply with both California's notice-prejudice rule and ERISA's claims procedure, there is no direct conflict between these two laws.

2. California's notice-prejudice rule does not stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.

The second prong for determining whether there is a conflict between state and federal law is much more nebulous than the direct conflict or physical impossibility test. The "stands as an obstacle" prong forces the Court to determine the intent of Congress, which is not dissimilar to field preemption and the determination whether Congress intended to occupy the field. Paul Wolfson, *Preemption and Federalism: The Missing Link*, 16 HASTINGS CONST. L.Q. 69 (1988). However, because Congress expressly ceded power back to the states to regulate the business of insurance, AARP contends that it is crucial not to conflate field and conflict preemption principles.[10/] Thus, the Court's test of whether the state insurance law can be harmonized and accommodated with ERISA recognizes this distinction and strikes the right

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[10/] In contrast to conflict preemption, field preemption leaves no room for states to supplement federal regulation because Congressional intent is inferred from the comprehensiveness of the federal regulations. *English v. General Electric Co.*, 496 U.S. 72, 78-79 (1990).

balance in determining whether Congress intended to oust state insurance law.[11/] *John Hancock*, 510 U.S. at 97-98.

> Analysis of whether a state law frustrates the attainment of Congress' objectives involves several steps: an identification of congressional purposes, an assessment of the effect of the state law and a determination whether that effect 'stands as an obstacle' to one of the purposes underlying the federal law.

Jordan, *supra*, at 1200.

In analyzing Congress' purposes, the Court must look not only at the stated purposes but at the structure of the statute as a whole.[12/] ERISA's declared principal purpose is "to protect plan participants and beneficiaries . . . ." *Boggs*, 117 S. Ct. at 1762 (*citing Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 90 (1983)); ERISA § 2(b), 29 U.S.C. § 1001(b). The purpose of ERISA's claims procedure and its interpreting regulations is to provide minimum standards to protect participants and beneficiaries. *See* 29 C.F.R. § 2560.503-1; Claims Procedure for Employee Benefit Plans, 42 Fed. Reg. 27,426 (1977). Consequently, AARP contends that the fact that federal and state laws are different does not mean that there is an impermissible conflict. In this instance, we would further contend that state insurance laws may set additional

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[11/] In determining whether there is preemption under the Supremacy Clause, uniformity is not an appropriate purpose to be considered. However, uniformity is an appropriate purpose to be considered in the context of field preemption. Karen A. Jordan, *The Shifting Preemption Paradigm: Conceptual and Interpretive Issues*, 51 VAND. L. REV. 1149, 1174-76 (October 1998).

[12/] Characterization of the federal and state purposes is determinative of the outcome of the analysis. Erwin Chemerinsky, *Constitutional Law: Principles and Policies*, § 5.2 (1997).

standards to ERISA's minimum standards. In other words, ERISA is not absolute, but explicitly recognizes a role for state insurance regulation, thus permitting state insurance laws to supplement or complement ERISA's standards. *John Hancock*, 510 U.S. at 97-98; *cf. Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597 (1991) (federal law set the minimum standard for pesticide use, and thus did not preempt local rules); *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132 (1963) (federal law did not preempt state law setting other standards for measuring the maturity of avocados).

This analysis is consistent with this Court's decisions in *FMC Corp. v. Holliday*, 498 U.S. 52 (1990), and *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724 (1985). In *Metropolitan Life*, this Court held that ERISA did not preempt a state law mandating minimum mental health benefits because it was exempted under the saving clause. *Id.* at 744.[13/] The court did not find that state laws regulating the substantive terms of group health insurance contracts conflict with ERISA. Similarly, in *FMC Corp.*, this Court held that a state anti-subrogation clause was preempted as applied to a self-funded ERISA plan. The Court emphatically stated:

> [I]f the plan is insured, a State may regulate it indirectly through regulation of its insurer and its insurer's insurance contracts; if the plan is uninsured, the State may not regulate it. As a

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13/ We note that Congress has recently passed certain mandated benefit laws. Newborns' and Mothers' Health Protection Act of 1996, Pub. L. No. 104-204, 110 Stat. 2935, 2935-39 (codified at ERISA § 711, 29 U.S.C.A. § 1185 (West 1999)) (minimum hospital length of stay for postpartum care); Mental Health Parity Act of 1996, Pub. L. No. 104-204, 110 Stat. 2944, 2944-47 (codified at ERISA § 712, 29 U.S.C.A. § 1185a (West 1999)) (prohibiting annual or lifetime limits on mental health benefits that are lower than any comparable limits for medical and surgical benefits). Unlike the law at issue in *Metropolitan Life*, these laws apply to both insured and self-funded ERISA plans.

> result, employers will not face "'conflicting or inconsistent State and local regulation of employee benefit plans.'"

FMC Corp., 498 U.S. at 64 (*quoting Shaw*, 463 U.S. at 99). Clearly, the Court implicitly found that state insurance regulation did not lead to conflict or inconsistency with ERISA.

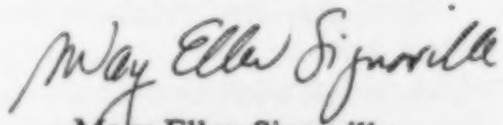
Here, the state insurance law protects participants and beneficiaries by providing a complementary interpretive rule which will deem their claims to be timely filed. The insurer obviously meets the ERISA's claims procedure standards by providing a reasonable period of time to file a claim. The effect of this state law is to provide additional time for a participant to have his or her claim deemed timely filed, while still protecting the insurer from stale claims. There is no conflict or inconsistency with ERISA. Thus, California's notice-prejudice rule cannot be found to stand as an obstacle to the accomplishment and execution of Congressional purposes and objectives. Instead, this law can easily be harmonized or accommodated with ERISA.

CONCLUSION

For the above reasons, AARP urges the Court to hold that California's notice-prejudice rule should not be preempted under the Supremacy Clause because it can be harmonized and accommodated with ERISA's claims procedure.

January 8, 1999

Respectfully submitted,



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